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FILED
DISTRICT COURT OF GUAM

DEC 11 2007

JEANNE G. QUINATA
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

UNITED STATES OF AMERICA,

CRIMINAL CASE NO. 07-00067

Plaintiff,

vs.

SENTENCING MEMORANDUM

TANYA L. TERLAJE,

Defendant. /

I. THE DEFENDANT SHOULD RECEIVE A REASONABLE SENTENCE
BASED ON THE CONSIDERATION OF HER UNIQUE CHARACTERISTICS
BASED ON UNITED STATES V. BOOKER AND 18 U.S.C. §3553(a).

In United States v. Booker-Fanfan, decided January 12, 2005, the Supreme Court held that the sentencing guidelines must be considered merely as "advisory" and only one of the sentencing factors to be used in conjunction with those listed for consideration during sentencing in 18 U.S.C. §3553(a). 125 S.Ct. 738, 750 (2005). Under the Sentencing Reform Act, specifically 18 U.S.C. §3553(b)(1), the guidelines were a mandatory nature, requiring courts to impose sentences based on the offense

1 level, criminal history category, and guideline range as provided for in the guideline
2 sentencing table. Yet, in Booker, the Court held that 18 U.S.C. §3553(b)(1) and 18
3 U.S.C. §3742(e), which made and were dependent on the guidelines' mandatory
4 nature "must be severed and excised." Id., at 756.

5 Although the congressional intent in enacting the above-mentioned statutes
6 were to "provide certainty and fairness in meeting the purposes of sentencing, [while]
7 avoiding unwarranted sentencing disparities," Congress also sought to maintain
8 "sufficient flexibility to permit individualized sentences when warranted." Id., at 767,
9 citing 28 U.S.C. §991(b)(1)(B). As noted in the guidelines themselves, the purpose of
10 the guidelines were to promote "honesty," "uniformity," and "proportionality" that would
11 appropriately impose "different sentences for criminal conduct of different severity."
12 USSG §1A1.1, App. Nt. 3. Yet, it is also noted that "[perfect] uniformity . . . destroys
13 proportionality." Id. Explicit in this note is the notion that sentences require
14 proportionality based on factors not considered by the sentencing commission, which
15 may undercut the goal of uniformity of the guidelines. Thus, the guidelines are now
16 merely "advisory" and while judges must "consult [the] guidelines" during sentencing,
17 they are not bound to apply them. Booker, at 767.

18
19 Implicit in the goal of proportionality in sentencing is a requirement that the
20 sentence be reasonable. To achieve this, the Legislature has stated that the
21 sentencing judges shall consult Section 3553(a), which sets forth factors to take into
22 account in delineating a sentence. These factors include: the need for the sentence
23 to reflect the seriousness of the offense and to provide just punishment for such, the
24 need to protect the public from further offenses of the defendant, the need to provide
25

1 the defendant with correctional treatment in the most effective manner. 18 U.S.C.
2 §3553(a)(1)-(3).

3 In fact, Section 2B1-1, Commentary 19(C) of the Guidelines state: "There may
4 be cases in which the offense level determined under this guideline substantially
5 overstates the seriousness of the offense. In such cases, a downward departure may
6 be warranted."

7 Furthermore, judges must also consider the nature of the offense along with the
8 character and history of the defendant. In the case at hand, as previously discussed,
9 an inquiry into the characteristics and history of the Defendant reflects that of a high
10 school dropout who had no run-ins with the law. These facts are compelling in
11 themselves as they go toward the culpability of the Defendant and her ability to realize
12 the repercussions of her actions. The sentence imposed should reflect the Defendant
13 in the most effective manner and a period of imprisonment would serve neither the
14 needs of the Defendant nor the governmental interest.

16 Furthermore, although the charge itself should not be taken lightly, the facts
17 and circumstances surrounding the evidence leading to the Defendant's charge does
18 not substantiate a claim of potential dangerousness to the public or herself. The
19 Defendant was cited for stealing food and drinks. Thus, the actual seriousness of the
20 underlying offense does not call for harsh punishment as with the case of offense
21 where a crime of violence against an identifiable victim. As the crime did not involve a
22 societal threat or risk of threat, there is no indication that there is a substantial need to
23 protect the public from future crimes of the Defendant.
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1 Thus, based on the above-mentioned factors and the wide latitude granted to
2 sentencing judges in considering various factors and characteristics of a defendant in
3 the imposition of an appropriate and reasonable sentence, the Defendant respectfully
4 requests that this Court impose a reasonable sentence outside of the advisory
5 guideline range.
6

7 **II. SENTENCING RECOMMENDATION**

8 Based on her role, Defendant TANYA L. TERLAJE ("TERLAJE") should be
9 granted a variance, what is referred to as a departure in the old guideline context,
10 from the suggested guideline range. Probation has established Defendant
11 TERLAJE's total base offense level at four (4), with a range between 0 to 6 months,
12 with one-year of supervised release to follow. However, this recommendation fails to
13 reflect Defendant TERLAJE's role and the role she played in the commission of the
14 current offense. In taking to account Defendant TERLAJE's role, a 4-Level variance
15 should be granted by this Court, fixing her total offense level at zero (0). Defendant
16 TERLAJE has a criminal history category of 1.
17

18 Defendant TERLAJE was cooperative when contacted by federal law
19 enforcement, has accepted responsibility, provided substantial cooperation to the
20 United States, and has expressed her sincere desire to reform and place all this
21 history behind her to move on. Thus, Defendant TERLAJE respectfully requests that
22 the proposed 0-6 months period of incarceration be zero.
23

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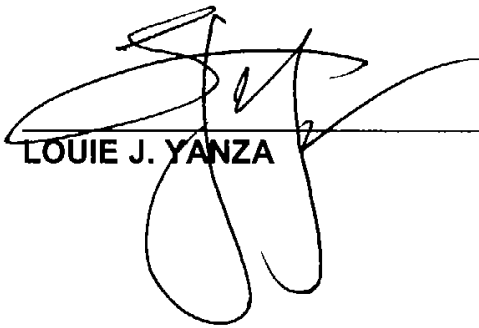
1 **CONCLUSION**

2 Based on the above, Defendant TERLAJE respectfully requests that this Court
3 grant the 4-Level downward variance from the recommended sentencing guideline
4 range due to her role and the substantial cooperation she has provided to the United
5 States.

6 Respectfully submitted this 11th day of December, 2007.

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9 Attorneys for Defendant
10 **TANYA L. TERLAJE**

11 By:

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13 **LOUIE J. YANZA**
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